

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

| | | |
|-------------------------------------|---|----------------------------|
| FEDERAL TRADE COMMISSION, |) | |
| et al., |) | |
| |) | |
| <i>Plaintiffs-Appellees,</i> |) | |
| v. |) | |
| |) | |
| AMAZON.COM, INC., |) | Appeal No. 24-3835 |
| |) | |
| <i>Defendant-Appellee</i> |) | |
| v. |) | D.C. No. 2:23-cv-01495-JHC |
| |) | (W.D. Wash. at Seattle) |
| AMERICAN BOOKSELLERS |) | |
| ASSOCIATION, INC., |) | |
| |) | |
| <i>Proposed Intervenor, Movant-</i> |) | |
| <i>Appellant.</i> |) | |
| |) | |
| |) | |

**DEFENDANT-APPELLEE AMAZON.COM, INC.’S RESPONSE TO
APPELLANT’S MOTION TO SUBMIT THIS APPEAL ON BRIEFS,
WITHOUT ORAL ARGUMENT**

Appellant American Booksellers Association, Inc. (“ABA”) has requested to submit this case without oral argument. Oral argument is not necessary to deny ABA’s appeal. The District Court rightly denied ABA’s motion to intervene because ABA seeks to inject into the underlying action different factual and legal theories that are not at issue in the underlying action. As Plaintiffs stated in the District Court, ABA’s “claims are different from those in this case” and therefore ABA’s intervention “would essentially create a whole new suit.” No. 2:23-cv-

01495, ECF 234, at 1. In short, ABA has not met its burden to show that it meets any of the separate and independent requirements to intervene as of right, and ABA would not be prejudiced if it is not permitted to intervene here. If the Court, however, decides to hear oral argument, Amazon will plan to participate in person.

Moreover, expedited consideration of this appeal in the manner urged by ABA is not warranted. As discussed in Amazon's brief, ABA waited seven months to seek intervention in the District Court, despite ABA's awareness of the issues in this action and ABA's own purported claims. Dkt 32.1, Brief of Defendant-Appellee Amazon.com, Inc., at 36. To warrant expedited treatment, ABA must establish that irreparable harm will occur absent such treatment. On this record, ABA has presented no reason why the Court should depart from its established procedures and timing for considering and resolving appeals.

DATED this 8th day of October, 2024.

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Respectfully Submitted,

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